IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL SECOND APPEAL No. 332 of 2004

GANPAT LAL
V/S
MAHESHWARI SAMAJ TRUST DHARAMSALA & ANR

Mr. MANISH SHISHODIA, for the appellant / petitioner

Mr. BR MEHTA, for the respondent

Date of Order : 4.7.2006

HON'BLE SHRI N P GUPTA,J.

ORDER

Heard learned counsel for the parties.

Learned lower Appellate court has decreed the plaintiff's suit for ejectment finding the tenancy to have been validly terminated. However, the decree for the arrears of rent passed by the learned trial court has been modified, and the amount has been reduced.

It is contended by the learned counsel for the appellant, that the plaintiff had set up a tenancy dt. 1.6.1993 at the rate of Rs. 250/- per month, and on that basis the notice terminating tenancy, being Ex. 3, was given, while the learned lower Appellate Court has not found the said rent note Ex. 2 to be acceptable, and since according to the defendant he is a tenant in the property at the rate of Rs. 125/- per month, since 1.1.1993, vide rent note Ex.5, and since that tenancy, under Ex. 5, has

not been terminated, vide notice Ex.3, the learned court below could not decree the suit as the notice cannot be said to be valid. The other submission made is that in view of the judgment of Hon'ble the Supreme Court, in R.S.Lala Praduman Kumar Vs. Virendra Goyal reported in AIR 1969 SC-1349, this Court should grant relief against forfeiture as the entire amount of rent in default has already been paid. With these submissions it is contended that the impugned decree be set aside.

I have considered the submissions.

So far the judgment in Praduman Kumar's case is concerned, that is distinguishable on facts, inasmuch as, that case was a case of permanent tenancy, and the lease stipulated, that in the event of default of payment of rent for two consecutive years the tenancy right were to stand forfeited, and relying upon that stipulation, the tenant was sought to be evicted, wherein Hon'ble the Supreme Court held, that equitable relief against forfeiture can be granted. In the present case the plaintiff has not come with the claim of forfeiture of lease on account on non payment of rent but has terminated the tenancy, plain and simple, in accordance with the provisions of Section 106 of the Transfer of Property Act, therefore, the judgment passed in Praduman Kumar's case does not help the appellant.

Taking up the other submission, a bare reading of notice Ex.2, and its reply being Ex. A/4, as were read over to me by the learned counsel for the appellant, makes it clear, that till then the parties were ad idem about the tenancy, and the notice determining the tenancy, and the only controversy raised by the appellant was about the rent of rent being Rs. 125/-, and not Rs. 250/-, as alleged by the plaintiff. Significantly no controversy was raised in the reply Ex.-A/4, to the effect, that the appellant is not a tenant under the tenancy, as alleged by the plaintiff, but is a tenant under a different tenancy, which has not been determined, so as to vitiate the notice under Section 106. Notice was given on 21.7.1994 determining the tenancy w.e.f. 31.8.1994. Therefore, it is clear that one month's notice was given to the appellant, and I do not find any illegality in the notice, on the anvil of provisions of Section 106 of the Transfer of Property Act.

Thus, I do not find any substantial question of law to be involved in this second appeal, which may enable this Court to interfere with the impugned decree of the learned court below.

The appeal is, therefore, dismissed summarily.

(N P GUPTA),J.

/Sushil/